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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/820,147	03/28/2001	Eugene S. Dudash	LEAR 0847 PUS (2003 US)	3972
7590 03/16/2004			EXAMINER COZART, JERMIE E	
Mark E. Stuenkel Brooks & Kushman P.C. 22nd Floor 1000 Town Center Southfield, MI 48075-1351			ART UNIT 3726	PAPER NUMBER 21
DATE MAILED: 03/16/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/820,147

Applicant(s)

DUDASH ET AL.

Examiner

Jermie Cozart

Art Unit

3726

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 13-21 is/are pending in the application.
- 4a) Of the above claim(s) 19-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 13-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Admitted Prior Art (AAPA) in view of Shaver (3,327,385).

AAPA discloses at page 1, lines 19-27 of the specification, that it is known to provide openings in the back frame tube and secure the tubes therein by welding.

AAPA, however, does not disclose swaging the guide tube to form a swaged portion engaged with the seat back frame to thereby secure the guide tube to the seat back frame, swaging the guide tube to form an additional swaged portion on the guide tube wherein the additional swaged portion cooperates with the swaged portion to secure the guide tube to the seat back frame, or the step of swaging the guide tube to form an additional swaged portion is performed prior to the step of inserting the guide tube into the aperture. AAPA also does not disclose forming a first radially extending swaged portion on the guide tube, forming a second radially extending swaged portion on the guide tube such that the flat portion extends between the swaged portions, such that the swaged portions abut the flat portions to thereby secure the guide tube to the seat back frame.

Shaver discloses swaging a guide tube (14) to form a swaged portion (43) engaged with a frame (40) to thereby secure the guide tube (14) to the frame (40), swaging the guide tube (14) to form an additional swaged portion (13) on the guide tube wherein the additional swaged portion (13) cooperates with the swaged portion (43) to secure the guide tube (14) to the frame (40), the step of swaging the guide tube to form an additional swaged portion (13) is performed prior to the step of inserting the guide tube into the aperture. Shaver also discloses forming a first radially extending swaged portion (13) on the guide tube (14), forming a second radially extending swaged portion (43) on the guide tube such that a flat portion (41) extends between the swaged portions (13, 43), such that the swaged portions abut the flat portion to thereby secure the guide tube (14) to the frame (40). *See column 4, lines 6-24, and Figure 6 for further clarification.*

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to attach the guide tubes of AAPA to the frame by swaging instead of welding, in light of the teachings of Shaver, in order to effectively secure the members to one another.

### ***Response to Arguments***

3. Applicant's arguments, see page 2, line 5 – page 3, line 5, filed January 7, 2004, with respect the combination of AAPA in view of Lavery have been fully considered and are persuasive. The rejection of claims 13-15 and 17 with respect to AAPA and Lavery has been withdrawn.

4. Applicant's arguments filed January 7, 2004 with respect to the combination of AAPA in view of Shaver have been fully considered but they are not persuasive.

Applicant argues with respect to the combination of AAPA and Shaver (3,327,385), that there is no motivation to combine the references and that Shaver is non-analogous art.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, AAPA discloses all of the claimed subject matter except for attached the guide tube and frame by swaging. Shaver discloses an alternative way of attaching a tube to a frame (e.g. swaging). Shaver discloses that swaging a tube to a frame permits the use of light weight materials with no consequent undesirable weakening or lack of durability for the assembly, and in addition that the construction of the swaged assembly can be made at reasonable cost from relatively light weight materials which are in abundant supply. Shaver thereby provides a sound motivation for a substitute manner in which to connect an elongated frame member to a tube. One of ordinary skill in the art would look to the teachings of Shaver because Shaver deals with providing an alternative manner in which to connect a frame and tubular member, Shaver discloses that connecting the

members in the manner described allows for the use of light weight materials wherein there is no undesirable weakening or lack of durability, and there is reduced cost in using light weight materials for the constructed assembly. In conclusion, Shaver teaches that when connecting an assembly by swaging, one can use lightweight materials while maintaining substantial structural integrity, resulting in reduced cost.

In response to applicant's argument that Shaver (3,327,385) is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Shaver is reasonably pertinent to the particular problem with which the applicant was concerned, that is effectively attaching a metal tube member to a frame member by swaging. Shaver clearly discloses swaging a metal tube (14) onto a metal frame (40) so as to securably couple the members to one another.

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jermie Cozart whose telephone number is 703-305-0126. The examiner can normally be reached on Monday-Thursday, 7:30 am - 6:00 pm.

7. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on 703-308-1789. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JC

March 9, 2004



DAVID P. BRYANT  
PRIMARY EXAMINER